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March 1, 2018

VIA ECF & EMAIL

The Honorable Jesse M. Furman
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 430
New York, New York 10007

Re: *BlackRock Balanced Capital Portfolio (FI), et al. v.*
Deutsche Bank Nat'l Tr. Co., et al., No. 14-cv-09367 (S.D.N.Y.)

Dear Judge Furman:

In accordance with Your Honor's Individual Rules and Practices in Civil Cases § 7.C., we write on behalf of Plaintiffs to respectfully request the Court's permission to file under seal the highlighted portions of (i) the Memorandum of Law in Support of Plaintiffs' Rule 72 Objections and Motion to Vacate the Magistrate Judge's Order Denying Plaintiffs' Motion to Compel Production of Documents Over Which Defendants Waived Their Privilege; and (ii) Exhibit 2 of the Declaration of Benjamin Galdston, dated March 1, 2018 (together, the "Motion").

The highlighted portions of the Motion contain excerpts of or references to Deutsche Bank's privilege log, which has been designated as "Confidential" pursuant to the parties' Amended Stipulation and Agreed Protective Order (the "Protective Order") entered in this case on October 5, 2015 (ECF No. 105). Paragraph 29 of the Protective Order requires Plaintiffs to seek leave of the Court to file these documents under seal.

The Magistrate Judge previously approved the redactions contained in Exhibit 2 of the Galdston Declaration. *See* ECF No. 430, at 7.

While Plaintiffs are mindful of the presumption in favor of public access to judicial documents, *Lugosch v. Pyramid Co.*, 435 F.3d 110, 119-20 (2d Cir. 2006), some documents, "such as those passed between the parties in discovery, lie entirely beyond the presumption's reach and stand on a different footing." *Royal Park Invs. SA/NV, et al. v. Wells Fargo Bank, N.A.*, 14 Civ. 9764 (KPF) (SN), ECF No. 147 (citing *SEC v. TheStreet.com*, 273 F.3d 222, 232 (2d Cir. 2001)). This includes the highlighted portion of the Motion that Plaintiffs are requesting to be filed under seal. *Id.* ("Discovery materials therefore enjoy a presumption that they will be kept private until marshaled for use at trial or in a dispositive motion."); *see TheStreet.Com*, 273 F.3d at 233 (rejecting claim that deposition testimony became a "judicial document" "because the Court reviewed it in order to decide whether or not to enter [a] protective order").



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Accordingly, Plaintiffs respectfully request the Court's permission to file under seal the highlighted portions of the Motion. In accordance with Your Honor's Individual Rules and Practices in Civil Cases, Plaintiffs will file a redacted version of their submissions on the public docket.

Respectfully submitted,

/s/ Benjamin Galdston

Benjamin Galdston

Cc: All counsel of record (via email)